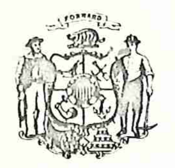
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The State of Wisconsin
Department of Justice
Madison
53702

Linda M. Clifford
Assistant Attorney General
(608) 266-0764

Bronson C. La Follette
Attorney General

David J. Hanson
Deputy Attorney General

November 19, 1976

Mr. Charles J. Hartzheim
Attorney at Law
301 North Lynndale Drive
Appleton, WI 54911

Re: State of Wisconsin v. James Lehrer
Case No. 145-072

Dear Chuck:

In response to your letter of September 27, 1976, requesting a breakdown of the forfeiture that we have proposed, I have prepared the following outline of items which entered into the decision.

The order was issued against Mr. Lehrer on August 7, 1974. Final compliance with all provisions did not occur until October 30, 1975. This covers a period of approximately 448 days. However, the DNR has always considered the noncompliance with separate provisions of order to constitute separate violations. Thus, the forfeiture was based upon the number of days of violation of each provision of the order.

Provision 1 c of the order required compacting and covering of all newly arriving wastes on a daily basis. Between the order deadline date and September 15, 1975, this requirement was met on only one or two occasions and not met at all with respect to the demolition material and other waste near the incinerator. That yields a total of at least 365 violations of provision 1 c.

Provision 3 a required compacting and covering of all papermill sludge waste with two feet of earthen material. Between the order deadline date and October 22, 1975, this requirement was not met with respect to the sludge material stored near the incinerator. That yields a total of at least 395 violations of provision 3 a.

Provision 3 b required compacting and covering of all exposed wastes other than the papermill sludge with a minimum of six inches of earthen material. Again, between the order deadline date and October 23, 1975, the requirement was not met with respect to certain materials stored near the incinerator, again approximately 395 violations.

Provision 3 d required proper screening around the north side. Mr. Lehrer was not in compliance with this requirement between the order deadline date and until at least April 23, 1975. This provides a total of at least 229 days of violation of provision 3 d.

Provision 5 a required the removal of all salvageable material. This was not accomplished until sometime after October 1, 1975. Thus, these violations total 340 days.

The total number of violations of the order is thus approximately 1,664. No doubt, a more careful analysis of the days of violation would raise that number. In answer to your specific question whether we are itemizing each separate violation times $10 or one continuous violation times $10, let me repeat that the department considers that a day of noncompliance with each separate provision constitutes a separate violation. If the daily violations of each provision as outlined above were multiplied by the statutory minimum of $10, then the minimum forfeiture provable at trial would be approximately $16,640.

The order was issued on August 7, 1974, to enforce provisions of the solid waste disposal code contained in NR 151, Wisconsin Administrative Code. Section 144.44 and Mr. Lehrer's solid waste disposal license both require compliance with NR 151. Mr. Lehrer was always on notice as to what his obligations were. None of the requirements were new ones, and, thus, seasonal weather difficulties play little part in reaching a forfeiture figure for that reason.

I believe that when you and your client consider the above analysis, our offer of $5,000 will seem more than reasonable and fair.

Very truly yours,

Linda M. Clifford

Linda M. Clifford
Assistant Attorney General

LMC:gl
cc: Chuck Leveque
Gary Kulibert

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